HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.5669 of 2006

Between:

B. Manjit Singh ... Petitioner

And

The District Collector and Magistrate, Nizamabad and two others.

... Respondents

:: ORDER::

Counsel for the petitioner: **Sri S. Satyam Reddy**

Counsel for respondent No.1: **Government Pleader for Revenue**

Counsel for respondent No.2: **Government Pleader for Home**

Counsel for respondent No.3: **Government Pleader for Prohibition and Excise**

3rd April, 2006

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Per G.S. Singhvi, CJ

In this petition filed by him through his father-in-law Sri R. Balbir Singh, son of Sri Gangan Singh, Ambedker Colony, Subhashnagar, Nizamabad, Manjit Singh has questioned his detention under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for short 'the Act').

In the affidavit filed by Sri R. Balbir Singh, it has been averred that the petitioner who is an electrician by profession was falsely implicated in three cases of allegedly possessing illicit liquor. He was arrested by the police, but was released by the competent court in all the cases registered between February and August 2005. It has been further averred that the petitioner was picked up from his house on 15-11-2005 and he was served with order of detention passed by the District Collector and District Magistrate, Nizamabad in Rc.No.E1/1748/2005, dated 16-11-2005 under Section 3 (1) and (2) of the Act. The Advisory Board constituted under Section 9 approved the detention of the petitioner by observing that there was sufficient ground for doing so. Thereafter, the State Government issued G.O.Rt.No.8046, General Administration (Law and Order II) Department, dated 22-

12-2005 confirming the order of detention and added that the detention shall continue for the maximum period of 12 months under Section 12 (1) read with Section 13 of the Act.

The petitioner has challenged his detention on the ground that the impugned orders are ultra vires to the provisions of the Act and also on the ground that the action taken by the respondents is discriminatory and violative of his fundamental right to equality guaranteed under Article 14 of the Constitution. According to the petitioner, a large number of persons who were allegedly involved in more serious offences have not been detained under the Act, but in his case, the District Collector, Nizamabad has passed the order of detention. In support of this assertion, the petitioner has referred to the cases of Tukaram Kamle, who is involved in 5 cases of illicit liquor, Pulari Pandu, who is involved in 8 cases, Ranjit Singh, who is involved in 3 cases, Syed Iqbal, who is involved in 5 cases, Rajender Singh, who is involved in 5 cases and Anjaiah, who is involved in 8 cases. He has also questioned the recommendations made by the Advisory Board by contending that the same are vitiated due to non-application of mind.

In the counter filed on behalf of the Collector and District Magistrate, Nizamabad, it has been averred that the petitioner was caught red-handed thrice with 10 litres of illicitly distilled liquor and 36 nips of Royal Gold Delux Whisky on 20-01-2005 in COR No.733/2004-05, 4.5 litres of illicitly distilled liquor on 24-6-2005 in COR No.236/2005-06 and 4 litres of illicitly distilled liquor on 21-8-2005 in COR No.406/2005-2006. The petitioner was

produced before the Special Judicial Magistrate of First Class, Nizamabad in the three cases respectively and was released on bail. The first two cases are pending trial and the third case is under investigation. The samples of contraband in all the three cases were sent for chemical examination and the analyst's reports reveal the contraband to be illicitly distilled liquor containing acidity, fusel oil and other allied impurities and is injuries to health and unfit for human consumption. After going through the material, the District Collector felt satisfied that the petitioner was involved in the trade of illicitly distilled liquor and his detention could be in public interest. Accordingly, the impugned order was passed. It has been further averred that the decision taken by the Advisory Board to confirm the detention of the petitioner is indicative of the seriousness of the offences committed by him.

Sri S. Satyam Reddy, learned counsel for the petitioner strenuously argued that even if the allegations set out in the order of detention are taken on their face value, the same could not justify his detention under Section 3 of the Act. Learned counsel further argued that no prejudice to the maintenance of public order can even be remotely presumed from the allegations enumerated in the order of detention. In support of his arguments, Sri Reddy relied on the judgments of this Court in **N. Rami Reddy v. Government of Andhra Pradesh**[1], **M. Prema Bai v. The Commissioner of Police**[2] and **Challa Venkateswara Rao v. Collector and District Magistrate, Krishna**[3].

Learned Government Pleader for Home argued that the activities of the petitioner brings him within the definition of 'bootlegger' under Section 2 (b) of the Act and, in order to prevent him from continuing such illegal activities, the competent authority passed the order of preventive detention under Section 3 (1).

We have carefully perused the record including the original file made available by the learned Government Pleader for Home, and have given our anxious consideration to the arguments of the learned counsel.

The grounds of detention specifically refer to COR No.733/2004-05, dated 20-01-2005, COR No.236/2005-06 dated 24-6-2005 and COR No.406/2005-06 dated 21-8-2005 registered against the detenu. The allegation in the three cases was that the petitioner was found in possession of 10 litres of illicitly distilled liquor and 36 nips of Royal Gold Delux Whiskey, 4.5 litres of illicitly distilled liquor and 4 litres of illicitly distilled liquor respectively. While 36 nips of Royal Gold Delux Whiskey involved in the first case is not illicit, the samples of the contraband seized in the three cases were found on chemical analysis to be illicitly distilled liquor containing acidity, fusel oil and other allied impurities and are injurious to health and unfit for human consumption. However, there is nothing on record from which it can be inferred that the petitioner himself was engaged in illicit distillation of the liquor found in his possession or that he was indulging in illicit sale of liquor. The order of detention refers to the information laid before the Collector and District Magistrate, which made it evident that the petitioner was doing illegal business of

illicitly distilled liquor in large scale in clandestine manner at regular intervals with a view to gain monetary benefit, but the material placed on record does not show that the petitioner was manufacturing or selling illicitly distilled liquor and that such manufacture or sale was dangerous to public health and safety. It is also inexplicable as to how possession of small quantity of illicitly distilled liquor, even if found true, is prejudicial to the maintenance of public order necessitating exercise of power of preventive detention. In our opinion, the officer concerned has used the stock words, phrases and expressions appearing in the statute to justify the exercise of power under Section 3 of the Act.

The Advisory Board constituted under Section 9 of the Act, while recording its opinion, after review of the case, did not spell out the reasons for forming an opinion that there was sufficient ground for detaining the petitioner. It is therefore reasonable to take the view that the order of detention passed by the District Collector and confirmation thereof by the Advisory Board are vitiated due to non-application of mind to the relevant factors.

We may now advert to Section 3 of the Act, which empowers the State Government to make an order for detention. The same read as under:

> "**3. Power to make orders detaining certain persons:-**
> (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
> (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction

of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:

Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

A reading of the plain language of Section 3 (1) makes it clear that the government can pass an order of detention only if it is satisfied that the activities of bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber is in any manner prejudicial to the maintenance of public order and it is necessary to prevent him from doing so. In **E. Sumathamma v. The State of Andhra Pradesh**[4], a Full Bench of this Court considered whether every violation of the Excise Act could justify an order of preventive detention. While answering the question in negative, the Full Bench observed:

"As there is no danger to public health or life if a

person stocks genuine liquor, it cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act."

In **Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool**[5], a Division Bench of this Court again considered the same issue. The facts of that case show that the detenu was found in possession of 200 litres of fermented jaggery wash and 10 litres of illicitly distilled liquor respectively in two cases. He was detained under Section 3 (1) of the Act. While quashing the order of detention, the Division Bench observed:

> "Everyone who answers the description of boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public order" (vide Section 3 (1)). The words "acting in any manner prejudicial to the maintenance of public order" are defined by Section 2 (a) as meaning "when a bootlegger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". The explanation to clause (a) of Section 2 says:
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> "for the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".

It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A. P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained under section 3 (1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the bootlegger cause "grave or widespread danger to life or public health", he can be detained, if a bootlegger sells illicitly distilled arrack, which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.

The question to be considered is whether a selling of illicit arrack itself is an act, which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health, no order of detention can be issued under section 3 of the Act."

The Division Bench concluded that unless the grounds of detention specifically advert to the fact that the percentage of fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act and that, since that has not been done, they were constrained to hold that the fundamental right of the detenu under Article 22 (5) of the Constitution of India was violated.

In **K. Chinnappa Reddy v. District Collector-cum-District Magistrate**[6] also three incidents led to registration of three cases under the Excise Act against the detenu, which were made basis for passing the order of preventive detention. The Division

Bench referred to the Full Bench judgment in **Sumathamma**'s case (supra) and held that the contrary view expressed by another Division Bench in W.P.No.2180 of 1994 decided on 09-3-1994 was *per incuriam*. The relevant portions of that order of the Division Bench are extracted below:

> "In the present case, first respondent, the detaining authority, has not mentioned in the grounds of detention that the arrack seized from the petitioner, the sales of which are attributed to the petitioner, if consumed, would result in grave or widespread danger to life or public health. The reports of the Regional Excise laboratory also do not show that the arrack contains any harmful substance. Dealing with a similar contention in W. P. No. 16671 of 1994 dated 17-10-1994, {**Boya China Subbarayudu**'s case (4 supra)}, Their Lordships held:
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> "unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under Article 22 (5) of the Constitution is violated"."

In **N. Rami Reddy v. Government of Andhra Pradesh**[7] also the detenu was involved in three cases of possession of 5 litres, 1½ litres and 1 litre of illicitly distilled liquor, which was found on chemical analysis to be illicitly distilled liquor unfit for human consumption, but was not stated to be 'harmful'. While quashing the order of detention, the Division Bench observed:

> "The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the

answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued under Section 3 of the Act."

In **Challa Venkateswara Rao v. Collector and District Magistrate, Krishna** (3 supra), a Division Bench of this Court referring to the decisions in **Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool** (5 supra) and **Smt.E. Nookaratnam, Nellore v. The Collector and District Magistrate, Nellore**[8] and other precedents pointed that even a potable spirit is also not free from fusel oil. The Division Bench observed that for the purpose of considering whether the presence of fusel oil is within the permissible limits, it is necessary for the authorities to mention the permissible percentage limits of the components in the spirit, which were sent for examination. In the case before the Division Bench, such permissible percentages were not specified. Therefore, while quashing the order of detention, the Division Bench observed as under:

"Apart from that, we also find that the quantity seized from the possession of the detenu was in a very small quantity like 5 liters and 10 liters and even the provisions of the Prohibition Act permits compounding the offences if the quantity of liquor is less than 20 liters. In such an event we are also of the considered view that possession of small quantity of liquor would not create a ground for feeling of insecurity among the general public or any section thereof or grave or widespread danger to life or public health, and the situation cannot be said to travel beyond the clutches of normal statutory procedures as contained in A. P. Prohibition Act."

In our opinion, the ratio of the aforementioned decisions is squarely applicable to the facts of the case. Therefore, the order of detention as also the order of confirmation passed by the Collector and District Magistrate, Nizamabad and the State Government respectively are liable to be nullified.

In the result, the writ petition is allowed. The order of detention in the proceedings of the Collector and District Magistrate, Nizamabad in Rc.No.E1/1748/2005, dated 16-11-2005 and the confirmation of the same by the Government of Andhra Pradesh in G.O.Rt.No.8406, General Administration (Law & Order.II) Department, dated 22-12-2005 are quashed. The detenu, who is now lodged in Central Prison, Chenchalguda, Hyderabad shall be set at liberty forthwith, if his presence is not required in connection with any other case.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

Date: 03-4-2006

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[1] 1997 (4) ALT 522 (D.B.)

[2] 2002 (2) ALT (Crl.) 487 (D.B.) (A.P.)

[3] 2004 (6) ALD 816 (DB)

[4] 1994 (1) ALT 396 (F.B.)

[5] 1995 (1) ALT (Crl.) 58 (D.B.) (A.P.)

[6] 1995 (1) ALT (Crl.) 454 (D.B.) (A.P.)

[7] 1997 (4) ALT 522

[8] 1997 (4) ALD 25 (DB) = 1997 (2) ALT (Crl.) 146 (DB) (AP)